

Exhibit 1

To
Plaintiff's Memorandum in Opposition to
Defendants' Motion To Transfer Venue

November 13, 2020

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

NOVA SERVICES INC.,)
)
Plaintiff,)
)
v.) CASE NO.
)
RECLEIM NOVA, LLC, et al.,) 1:20-cv-02773-RDB
)
)
Defendants.)

DECLARATION OF GUY T. NAYLOR

The undersigned Declarant, Guy T. Naylor, hereby declares, and affirms under the penalties of perjury, that he is competent to be a witness and the following facts are based on his personal knowledge and are true:

1. He is an adult citizen and resident of Baltimore County, Maryland;
2. He is the President and sole stockholder of the Plaintiff corporation, Nova Services, Inc. (“Nova Services”), a Maryland corporation in good standing that he formed on October 30, 2000. Nova Services’ principal place of business is located in Baltimore County, Maryland. Between the date of its formation and May 5, 2017, Nova Services grew into a multi-million dollar appliance recovery and recycling business with customers such as Lowe’s Home Centers, LLC, BGE Home and other major retailers who sell refrigerators, freezers and other household appliances.
3. Recleim Nova, LLC, is a Delaware limited liability company that registered with the Maryland State Department and Assessments and Taxation to do business in the state of Maryland on October 7, 2016. According to Defendant and Counter Plaintiff Recleim, LLC’s

Notice of Removal filed in this case on September 23, 2020, Defendant Recleim, LLC is the sole member of Recleim Nova. (ECF-1, ¶ 14 of Recleim, LLC's Notice of Removal, Sept. 23, 2020).

4. On May 5, 2017, Nova Services entered into an Asset Purchase Agreement ("APA") with Defendants Recleim Nova, LLC ("Recleim Nova") and Recleim, LLC ("Recleim"). A copy of the APA is attached as Exhibit A to Defendants' Answer And Counterclaim (ECF 13-1).

5. Beginning on May 5, 2017, Recleim Nova entered into commercial leases for a total of 85,000 square feet of rentable warehouse/storage area and 4,000 square feet of rentable office area in designated parts of a commercial building located at 2500 Grays Road, Dundalk, Maryland 21222. Recleim Nova maintained those Dundalk, Maryland offices and warehouse as its principal place of business at all times relevant to the captioned action, i.e. from May 5, 2017 through September 20, 2020.

6. Declarant was employed as the General Manager of Recleim Nova from May 5, 2017 until May 5, 2020. Substantially all of Recleim Nova's business was operated from its Dundalk, Maryland offices and warehouse. Recleim Nova did not have offices or rent warehouses in Delaware.

7. After disputes arose among the parties, Nova Services initially filed this action in the Circuit Court for Baltimore County on August 3, 2020. Nova Services' Complaint pled causes of action for breach of the APA, fraud, and a count to annul fraudulent conveyances made by the Defendants. In ¶ 23 of the Plaintiff's Complaint, Nova Services alleges that Recleim Nova assigned, conveyed, and/or removed from the State of Maryland valuable assets, including, but not limited to, 20 van trailers, with the intent and effect of rendering Recleim Nova insolvent so as to defraud its creditors, including Nova Services. (See ECF 1-2, ¶ 23 at page 8 of 13.)

8. Following Recleim's removal of the state court action to this Court, Defendants filed a motion to transfer venue to the United States District Court for the District of Maryland. (ECF-15). Defendants base their motion on Section 8.10 of the APA entitled "Submission to Jurisdiction" which states:

"Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby **may** be instituted in the federal courts of the United States of America or the courts of the State of Delaware in each case located in the city of Wilmington and county of New Castle, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding."

(APA § 8.11) (emphasis added).

9. Section 8.03 of the APA provides, "The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement." Accordingly, the "Submission to Jurisdiction" heading referenced in § 8.11 is not controlling and the APA does not mandate that suits must be filed in a Delaware court.

10. Plaintiff Nova Services sued Recleim Nova in Maryland because it conducted substantially all of its regular business in Baltimore County and the property which is the subject of the fraudulent conveyance action was located in Baltimore County, Maryland, prior to its removal from the state of Maryland.

11. Plaintiff Nova Services desires that this be tried by this Court and that it not be transferred to the United States Strict Court for the District of Delaware.

Dated: November 12, 2020

Respectfully submitted,


/s/
Guy T. Naylor, President¹
Nova Services Inc.

¹ The parties have agreed that documents can be signed electronically due to the COVID pandemic.